

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

DESIGN BASICS, LLC, and	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 3:16-cv-195
	§	
vs.	§	JURY DEMANDED
	§	
W R BIRKEY & ASSOCIATES INC.,	§	
doing business as Birkey Homes and W.R.	§	
Birkey Realty; and WAYNE BIRKEY,	§	
doing business as Birkey Homes and W.R.	§	
Birkey Realty,	§	
	§	
Defendant.	§	

ORIGINAL COMPLAINT

Design Basics, LLC, plaintiff, files this Complaint against W R Birkey & Associates Inc., doing business as Birkey Homes and W.R. Birkey Realty (“Birkey Homes”); and Wayne Birkey, doing business as Birkey Homes and W.R. Birkey Realty (“Mr. Birkey”) (hereinafter Birkey Homes and Mr. Birkey are collectively referred to as “Defendants”) and for its causes of action alleges the following:

Parties

1. Design Basics, LLC, is a Nebraska Limited Liability Company with its principal place of business in Omaha, Nebraska. Under Articles of Merger executed on July 1, 2009, Design Basics, LLC, is the successor by merger to Design Basics, Inc., and as such is the owner of all assets (including copyrights, trade and service names, trade and service marks, and all causes of action) that Design Basics, Inc., owned as of that date. Design Basics, LLC, and its predecessor (Design Basics, Inc.) will hereinafter be referred to as “Design Basics.”

2. Design Basics is engaged in the business of creating, marketing, publishing and licensing the use of “architectural works” (as that term is defined in the Copyright Act and the Architectural Works Copyright Protection Act of 1990, both codified at 17 U.S.C. § 101 et seq.) and technical drawings depicting such architectural works.

3. At all relevant times, Birkey Homes was a corporation organized under the laws of the State of Indiana with its principal place of business in St. Joseph County, Indiana. Birkey Homes may be served through its registered agent, Wayne Birkey, 51191 Cherry Road, Granger, Indiana 46530. Upon information and belief, Birkey Homes was voluntarily dissolved on December 17, 2015.

4. Upon information and belief, Mr. Birkey is a citizen of Indiana and resident of St. Joseph County, State of Indiana.

5. Upon information and belief, Mr. Birkey was the sole shareholder of Birkey Homes until its dissolution on or about December 17, 2015.

6. Upon information and belief, Mr. Birkey is presently doing business as Birkey Homes and W.R. Birkey Realty, as a home designer, homes builder, and realtor.

Jurisdiction and Venue

7. This Court has subject matter jurisdiction of this case under 28 U.S.C. § 1338 because this action arises under federal copyright law, 17 U.S.C. § 101 et seq.

8. Venue is proper in this District under 28 U.S.C. § 1400(a) because Defendants may be found in this District. Furthermore, or in the alternative, venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims at issue occurred in this District; and Defendants reside and do business in this District.

Factual Background

9. Design Basics is a building design firms which creates, markets, and licenses the use of “architectural works” (as that term is defined in the Copyright Act and the Architectural Works Copyright Protection Act of 1990 (the “AWCPA”)) and technical drawings depicting architectural works. Design Basics owns copyrights protecting the architectural works and technical drawings it has created.

10. Design Basics is the author and the owner of all copyrights in the following works, each of which has been registered with the United States Copyright Office:

Title	Registration Certificate No.
Plan No. 1032 – Monte Vista	VA 282-203, 694-095 & 752-162
Plan No. 1330 – Trenton	VA 314-016, 694-094 & 756-041
Plan No. 1455 – Newberry	VA 344-857, 694-093 & 710-605
Plan No. 1559 – Bancroft	VA 344-870, 694-094 & 752-162
Plan No. 1752 – Lancaster	VA 371-204, 694-094 & 756-041
Plan No. 2244 – Standley	VA 434-218 & 752-162
Plan No. 2249 – Normandy	VA 434-208, 694-088 & 726-372
Plan No. 2285 – Prairie	VA 467-639, 694-094, 726-354 & 1-921-718
Plan No. 2408 – Crawford	VA 485-123, 694-093, 756-041 & 1-921-776
Plan No. 2414 – Stanton	VA 485-125, 694-093, 726-361 & 1-926-487
Plan No. 2656 – Castelar	VA 542-694, 826-741 & 1-926-492
Plan No. 2701 – Ambrose	VA 524-308, 694-093, 710-606 & 1-926-479
Plan No. 2702 – Ellison	VA 542-690 & 1-926-477

11. The foregoing works described in paragraphs 10 above will be referred to collectively as the “Copyrighted Works.”

12. The Copyrighted Works have been published in various Design Basics plan books and publications.

13. Each of the Copyrighted Works constitutes original material that is copyrightable under federal law.

14. Design Basics is currently, and at all relevant times has been, the sole owner of all right, title and interest in and to the works described in paragraph 10 above.

15. Defendants have been engaged, at least in part, in the business of creating, publishing, distributing and advertising residential home designs through traditional print media, on the internet on sites such as www.birkeyhomes.com, and in marketing, advertising, constructing and selling homes built according to such designs.

16. Defendants have published, distributed, marketed and advertised certain architectural designs for single family residential homes, each consisting of a floor plan and exterior elevations, that Defendants have identified and marketed under the following model names: Andrea, Appleton, Ashbury, Belmont, Bridgeport, Britney, Hallbrook, Heather Lake, Kensington, Kingsbury, Megan, Miranda, Normandy, Oakridge, Sawyer, Sherwood, Sinclair, Zachery.

17. Design Basics' house designs, including the Copyrighted Works, have been marketed for years on a nationwide basis, including in this District, by means of plan books and other publications and also by means of the internet, including many websites.

18. Defendants have been actually aware of Design Basics and the works that Design Basics markets. At all times material to this case, Defendants have had a reasonable opportunity to have viewed the Copyrighted Works.

19. Defendants have violated and continue to violate Design Basics' exclusive rights in each of the Copyrighted Works (including the right to reproduce, the right to prepare derivative works and the right to sell), by copying, publishing, distributing, advertising,

marketing, selling and/or constructing in the marketplace, plans, drawings and houses which were copied or otherwise derived from the Copyrighted Works, examples of which include:

- a. Defendants' "Megan" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics' Plan No. 1032 – Monte Vista (and any predecessor or derivative thereof).
- b. Defendants' "Oakridge" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics' Plan No. 1330 – Trenton (and any predecessor or derivative thereof).
- c. Defendants' "Appleton" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics' Plan No. 1455 – Newberry (and any predecessor or derivative thereof).
- d. Defendants' "Kensington" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics' Plan No. 1559 – Bancroft (and any predecessor or derivative thereof).
- e. Defendants' "Bridgeport" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics' Plan No. 1752 – Lancaster (and any predecessor or derivative thereof).
- f. Defendants' "Heather Lake" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics' Plan No. 1752 – Lancaster (and any predecessor or derivative thereof).
- g. Defendants' "Sherwood" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics' Plan No. 2244 – Standley (and any predecessor or derivative thereof).
- h. Defendants' "Normandy" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics' Plan No. 2249 – Normandy (and any predecessor or derivative thereof).

- i. Defendants' "Britney" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics' Plan No. 2285 – Prairie (and any predecessor or derivative thereof).
- j. Defendants' "Sawyer" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 2408 – Crawford (and any predecessor or derivative thereof).
- k. Defendants' "Hallbrook" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 2414 – Stanton (and any predecessor or derivative thereof).
- l. Defendants' "Miranda" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 2414 – Stanton (and any predecessor or derivative thereof).
- m. Defendants' "Kingsbury" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 2656 – Castelar (and any predecessor or derivative thereof).
- n. Defendants' "Belmont" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 2701 – Ambrose (and any predecessor or derivative thereof).
- o. Defendants' "Andrea" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 2702 – Ellison (and any predecessor or derivative thereof).
- p. Defendants' "Zachery" (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 2702 – Ellison (and any predecessor or derivative thereof).

Cause of Action

Copyright Infringement

20. Design Basics complains of Defendants for copyright infringement, and incorporates paragraphs 1 through 19 above by reference.

21. Defendants' construction and sale of houses and creation of associated design and construction drawings based on Design Basics' Copyrighted Works has infringed and continues to infringe Design Basics' copyrights in the Copyrighted Works.

22. Defendants' creation and publication of non-pictorial representations based on Design Basics' Copyrighted Works have infringed and are infringing Design Basics' copyrights in the Copyrighted Works.

23. Design Basics is entitled to recover the actual damages it suffered as a result of the foregoing infringement, and all of Defendants' profits from such infringement, pursuant to 17 U.S.C. § 504(b).

24. In the alternative to the actual damages and infringer profits sought above, Design Basics is entitled to an award of statutory damages for all infringements of Design Basics' Copyrighted Works, as permitted by 17 U.S.C. § 504(c).

25. Pursuant to 17 U.S.C. § 505, Defendants are liable for Plaintiff's costs and reasonable attorneys' fees incurred in this action.

26. In addition, Design Basics is entitled to preliminary and permanent injunctions pursuant to 17 U.S.C. § 502 prohibiting Defendants from further infringement of its copyrights, including but not limited to the further use of infringing plans, creation or use of derivative plans, and construction, sale or rental of infringing structures.

27. Furthermore, this Court should issue an order pursuant to 17. U.S.C. § 503 directing the United States Marshal's Service to (a) impound all copies of the Copyrighted Works, in possession of Defendants or their agents or contractors in violation of Plaintiff's exclusive rights, and (b) upon final hearing of this case, to destroy or otherwise dispose of those copies.

Conditions Precedent

28. With respect to all counts, Design Basics generally avers that all conditions precedent to their rights of recovery have occurred or been performed, or have been waived or excused by Defendants.

Jury Demand

29. Pursuant to Federal Rule of Civil Procedure 38, Design Basics respectfully demands trial by jury of all issues so triable.

WHEREFORE, PREMISES CONSIDERED, Design Basics, LLC, prays that Defendants, be cited to appear and answer; and that upon final trial has and recovers from Defendants as set forth above, that it has permanent injunctive relief against Defendants as requested herein, and that it has such and other relief as it may show itself to be entitled.

Respectfully submitted,

/s/ Sean J. Quinn

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